

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

STEFAN PASSANTINO,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 4:23-CV-00300-ELR

**DECLARATION OF JESSE R. BINNALL IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT**

I, Jesse R. Binnall, declare:

1. I am an attorney admitted to practice before this Court *pro hac vice* and am managing partner at the law firm of the Binnall Law Group. I am counsel for Plaintiff, Stefan Passantino, in the above-captioned matter.
2. I submit this Declaration in support of Plaintiff's Motion for Entry of Default submitted pursuant to Federal Rule of Civil Procedure 55(a).
3. This matter arises under the Federal Tort Claims Act due to acts of government officials involved with the U.S. House of Representatives Select Committee to Investigate the January 6th Attack on the United States Capitol and their acts to wrongfully attack the reputation of Plaintiff Stefan Passantino.

The claim was first served on the House of Representatives on April 10, 2023. The government has had over a year to respond to Mr. Passantino's allegations.

4. Defendant, United States of America, was properly served in this case on February 14, 2024. Dkt. No. 17-1.

5. Based on this date of service and the Federal Rules of Civil Procedure, the deadline for Defendant to file an answer or other responsive filing was April 15, 2024.

6. On the evening of April 15, 2024, the government sought Plaintiff's consent for a seven-day extension to respond to the Complaint. Instead of sending the request to all counsel of record in the case, the government only sent the request to my co-counsel, Mr. Tyson, who was concurrently counsel in a trial in this district and did not see the request prior to the expiration of the deadline. *See Exhibit 1.*

7. On the evening of April 15, 2024, about two hours after requesting Plaintiff's consent, Defendant moved to extend this deadline. Dkt. 18. Plaintiff did consent to the motion, on the morning of April 16, 2024, which was noted in an amended motion filed with the Court shortly thereafter. Dkt. 19. Nevertheless, the Court promptly denied the motion by minute order on April 16, 2024 because the movant failed to establish good cause.

8. Once the Court denied the motion Plaintiff had consented to, counsel for the government then contacted the Court's chambers *ex parte* and without prior

notice to Plaintiff to seek direction from the Court's staff. The Court's staff advised counsel to not engage in further *ex parte* communication and copied Plaintiff's counsel on its response. *See* Exhibit 2.

9. Counsel for the parties then agreed to meet and confer to seek an agreed path forward in the litigation. A telephone conference was held on April 19, 2024, wherein the government agreed that if Plaintiff would consent to Defendant filing an answer (and not any motion pursuant to Rule 12(b)) and if the parties agreed to hold a Rule 26(f) discovery conference on April 24, 2024, then the government could file an answer on or before May 3, 2024. The government was also obligated to circulate its proposed consent filing to Plaintiff for review. It declined to do so until approximately 4:58 p.m. on April 23, 2024. *See* Exhibit 3.

10. Mr. Tyson responded to that email as follows: "While we continue to consent to the relief as we previously discussed, we do not consent to the motion as drafted. We have some revisions to the motion that should be straightforward. Are you available for a call tomorrow?" Exhibit 4.

11. As a result of this email, and despite the fact that the government had already represented to the Court's staff by email that a Rule 26(f) conference would occur on April 24, 2024, counsel for the government decided to alter its agreement with Plaintiffs to file only an answer and hold a prompt Rule 26(f) conference. *See* Exhibit 5.

12. On April 24, 2024, the Court instructed Plaintiff to show cause as to why his case should not be dismissed for failure to prosecute. Dkt. 20. Plaintiff is bringing this motion for a clerk's entry of default to comply with that order and show cause.

13. Specifically, the government is in default; it did not file any responsive pleading within the deadline to do so.

14. No answer or other responsive filing has been filed since April 15, 2024.

15. Defendant is not a minor, an incapacitated person, or a person in the military.

16. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 25th day of April 2024, at Alexandria, Virginia.

/s/ Jesse R. Binnall
Jesse R. Binnall
BINNALL LAW GROUP, PLLC
717 King Street, Suite 200
Alexandria, Virginia 22314
Phone: (703) 888-1943
Fax: (703) 888-1930
jesse@binnall.com

Attorney for Plaintiff